

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Lockheed West Seattle Superfund Site
Seattle, King County, Washington

Lockheed Martin Corporation,
Respondent

Proceeding under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and Liability
Act, 42 U.S.C. § 9606(a).

U.S. EPA Region 10
CERCLA Docket No. 10-2015-0079

**AMENDMENT TO UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL
DESIGN AND REMEDIAL ACTION**

1. The U.S. Environmental Protection Agency (EPA) issued the Administrative Order for Remedial Design and Remedial Action, EPA Docket No. 10-2015-0079 (hereinafter referred to as Order), to Lockheed Martin Corporation (the Respondent) on April 13, 2015, for the Lockheed West Seattle Superfund Site (Site).
2. The purpose of this Amendment is to add a Financial Assurance requirement to the Order. To prevent the need to renumber the Order's provisions, Section XXXIII, Financial Assurance, is hereby added to the end of the Order.
3. Other than the addition of Section XXXIII, Financial Assurance, the Order remains in full force and effect as originally issued.
4. **Effective Date.** This Amendment is effective on October 26th unless Respondent sends a written request for a conference with EPA to discuss this Amendment and matters pertinent to this Amendment, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Amendment. Any such request shall be sent by October 5th to:

Dean Ingemansen
Office of Regional Counsel
U. S. EPA, Region 10
Suite 900, M/S ORC-113
1200 Sixth Ave
Seattle, WA 98101
(206) 553-1744

5. **Intent to Comply.** On or before the Effective Date of this Amendment, Respondent shall notify EPA in writing of its irrevocable intent to comply with this Amendment. Such written notice shall be sent in accordance with the instructions in Paragraph 4. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date of this Amendment, any "sufficient cause" defense[s] asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notification within this time period shall, as of the Effective Date of this Amendment, be treated as a violation of this Amendment by Respondent.

XXXIII. FINANCIAL ASSURANCE

6. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$48,110,000.00 ("Estimated Cost of the Work"). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available under "Financial Assurance" at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm>, and satisfactory to EPA. Respondent may use multiple mechanisms if it is limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.
- a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work required by this Order; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Regional Financial Management Officer advises the trustee in writing that: (A) payments are necessary to fulfill the affected Respondent's obligations under the Order; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;
- b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with Paragraph 11 (Access to Financial Assurance);

- c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 11 (Access to Financial Assurance);
 - d. A demonstration by Respondent that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
 - e. A guarantee to fund or perform the Work executed by one of the following: (1) a direct or indirect parent company of Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.
7. **Standby Trust.** If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 6.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 11 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 8. Until the standby trust fund is funded pursuant to Paragraph 11 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.
8. Within 30 days after the Effective Date, Respondent shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 6 for EPA's review. Within 60 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA Regional Financial Management Officer: Russell Harmon, OMP-147, US EPA Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; with copies to: Dean Ingemansen, Office of Regional Counsel, US EPA Region 10, 1200 Sixth Street, MC ECL 113, Seattle WA 98101; Gail Akiyama, US EPA Region 10, 1200 Sixth Street, MC ECL 122, Seattle WA 98101; and to the United States at: Chief, Environmental Defense Section, U.S. Department of Justice, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026-3986, Re: CERCLA Docket No. 10-2015-0079; and Chief, Environmental Enforcement Section, U.S. Department of Justice, Environment and Natural Resources Division, P.O. Box 7611, Washington, DC 20044-7611, Re: CERCLA Docket No. 10-2015-0079.

9. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 6.d or 6.e, Respondent shall also comply, and shall ensure that their guarantors comply, with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 90 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification to EPA no later than 30 days, in accordance with Paragraph 10, after any such entity determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" mean the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated, in addition to the Estimated Cost of the Work under this Order; (3) the terms "owner" and "operator" include Respondent making a demonstration or obtaining a guarantee under Paragraph 6.d or 6.e; and (4) the terms "facility" and "hazardous waste management facility" include the Site.
10. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondent shall follow the procedures of Paragraph 12 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Order.
11. **Access to Financial Assurance.**
- a. If EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider regarding Respondent's failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such

notice. If, after expiration of the 10-day period specified in this Paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

- b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

12. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or following Respondent's no more frequent than annual request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 8, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 6 and 7. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount of the financial assurance mechanism, or make any other change, only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual(s) referenced in Paragraph 8 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

13. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

So Ordered this 25 day of September, 2015

By: Cami Grandinetti
Cami Grandinetti, Program Manager
Remedial Cleanup Program
U.S. EPA Region 10